

Congress of the United States

Washington, DC 20515

December 9, 2005

Administrator Stephen L. Johnson
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460-0001

Dear Administrator Johnson,

As members of Congress who are concerned about the Superfund program, we are writing to follow up on a recent Government Accountability Office Report (05-658) released in August 2005 regarding the Environmental Protection Agency's ability to hold businesses that handle or produce hazardous materials accountable for the costs of cleanup under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 that established the Superfund program. Per the GAO recommendations outlined in the report, we are particularly interested in seeing the EPA implement and enforce financial assurance requirements for environmentally liable businesses.

Throughout the United States, there are currently over 1300 sites listed, or proposed for listing on the National Priorities List of the nation's most contaminated sites under the Superfund program. The health and environmental tolls on the communities that surround Superfund sites and the financial costs to clean these sites are massive. Recent studies estimate that on average it will cost \$140 million to clean up each of the 142 largest Superfund sites, for a total of almost \$20 billion¹. These estimates come at a time when chronic funding shortfalls are impeding Superfund cleanup progress. Even more disconcerting are the potential toxic effects of polluted soil and groundwater on our communities and our constituents, and the environmental justice implications of many sites that are located near poor minority populations.

While progress has been made in cleaning up many Superfund sites, we are concerned that the EPA is not doing enough to ensure that businesses with potential environmental liabilities are held accountable for the costs of cleaning up any pollution they produce. By not implementing CERCLA's financial assurance mandate, the EPA cannot guarantee that businesses will have the money to finish cleanups at their polluted sites prior to listing under the Superfund program. The result is that taxpayers are unfairly burdened, cleanups face significant delays, and people are further exposed to unnecessary health risks. The problem is particularly acute for liable businesses that can evade their environmental responsibilities in bankruptcy unless they are pursued by the Department of Justice through litigation during the bankruptcy process.

As the GAO report found, *"EPA has not yet implemented a 1980 statutory mandate under Superfund to require businesses handling hazardous substances to maintain financial assurances that would provide evidence of their ability to pay to clean up potential spills or other*

¹ National Advisory Council for Environmental Policy and Technology Superfund Subcommittee Final Report, April 2004, and Katherine N. Probst and David M. Konisky: *Superfund's Future: What Will It Cost?* (Washington, D.C.: Resources for the Future, 2001).

*environmental contamination that could result from their operations. By its inaction on this mandate, EPA has continued to expose the Superfund program, and ultimately the U.S. taxpayers, to potentially enormous cleanup costs at facilities that currently are not required to have financial assurances for cleanup costs, such as many gold, lead, and other hardrock mining sites and metal-plating facilities.”*²

In addition the GAO found that “EPA has not collected data on the financial assurances businesses are required to have in place under the Superfund and RCRA (Resource Conservation and Recovery Act) corrective action programs, such as the type of assurance required, the amount of financial assurance they provide, and whether the financial assurance is still authorized or is in force.”²

By not implementing or properly overseeing these financial assurance requirements, the EPA is ignoring a significant tool at its disposal to reduce environmental contamination by businesses that handle hazardous waste. However, if these financial assurance requirements *were* in place and *were* guaranteed in the form of insurance, bonds, letters of credit or other such financial instruments, then businesses would face a significant incentive to improve their environmental practices and reduce their potential insurance fees. Over time the cumulative effect of implementation should lead to a reduction in hazardous pollution, fewer Superfund sites, reduced cleanup costs for taxpayers, and an overall improvement in environmental and public health.

For these reasons, we strongly believe that the EPA should immediately move towards implementing its statutory financial assurance mandate for businesses handling hazardous substances—as specified by Congress under CERCLA twenty five years ago—and should work towards greater oversight and enforcement of its existing financial assurance requirements.

Specifically we ask that the EPA comply with the requirements under Section 108 (b)(1) of CERCLA to identify the classes of facilities subject to regulation, prioritized by risk, and that the EPA establish financial responsibility requirements for each of those classes of facilities that are “consistent with the degree and duration of risk associated with the production, transportation, treatment, storage, or disposal of hazardous substances” as specified in the law³. This obligation is especially urgent as the number of bankruptcies for environmentally liable businesses is expected to grow in the future, even as new Superfund sites become listed and the costs of cleanup place further strain on what little funding remains in the trust fund.

We request that you provide us with an explanation of the EPA’s efforts to implement this mandate to date, including the potential cost, and a description of any potential obstacles to its implementation, such as opposition by any affected industry or a lack of funding by Congress.

While we understand that in many cases the EPA faces competing priorities in undertaking its mission, the agency has had twenty five years to implement these financial assurance requirements. As a statement of principle, we should not allow businesses to externalize the cost


² GAO Report 05-658, Environmental Liabilities: EPA Should Do More to Ensure That Liable Parties Meet Their Cleanup Obligations. GAO. 08/05

³ (P.L. 96-510) Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.

of polluting our environment and our communities, and we should not allow them to walk away from their financial obligation to pay for cleanup.

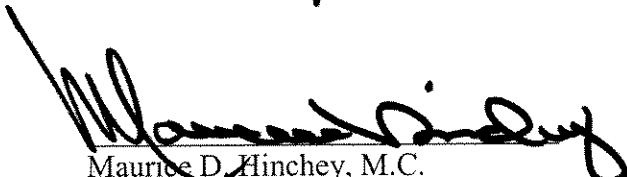
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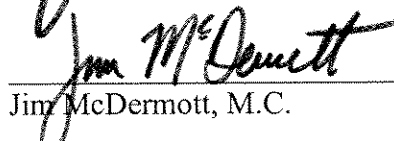

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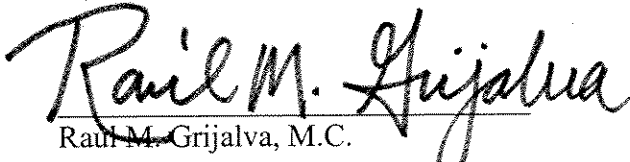

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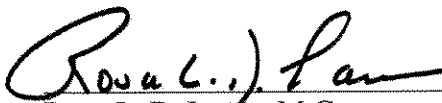

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